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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,772	01/22/2004	Stephen W. Briggs III	BBMED.004A	3108

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EXAMINER

MITCHELL, TEENA KAY

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,772

Applicant(s)

BRIGGS, STEPHEN W.

Examiner

Teena Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/7/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

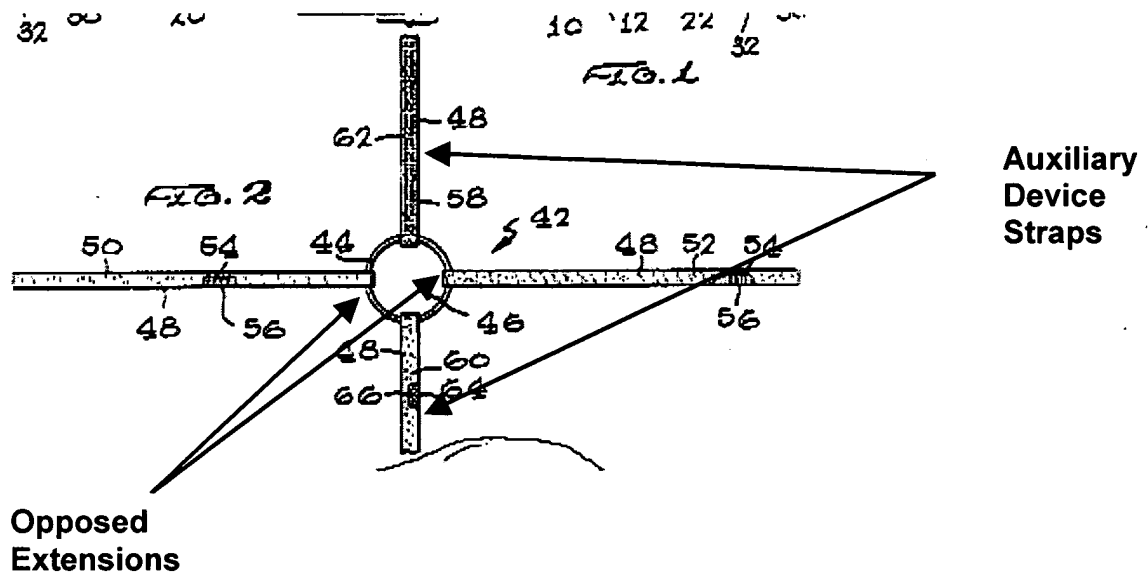
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Briggs, III (5,839,437).

Briggs in a securing apparatus for tracheostomy tubes discloses:

- a ring (44) having a pair of opposed extensions defining strap holds (Col. 3, lines 36-48), and further having a pair of secondary strap holds (see illustration of Fig. 2 below); a void (46) within the ring (44) configured to allow passage of a tracheostomy tube (38) through the ring (44);
- a pair of auxiliary device straps (see illustration of Fig. 2 below) affixed to each of the secondary strap holds, the auxiliary straps configured so that when the tracheostomy tube extends through the ring void (46), the auxiliary straps extend around an auxiliary device (40) that is fit onto the tracheostomy tube (Fig. 5) so as to maintain a maximum spatial relationship between the auxiliary device and the ring (44).



With respect to claim 2, Briggs discloses wherein the auxiliary device straps are configured with fastening elements (Col. 3, lines 54-64) to releasably secure the auxiliary device straps together (Fig. 5).

With respect to claim 3, Briggs discloses wherein the fastening elements comprise hook and loop fasteners (Col. 3, lines 54-64).

With respect to claim 4, Briggs discloses a tracheostomy collar (36) having a neck strap (20) and wherein the ring is secured to the tracheostomy collar by the neck strap (Figs. 3-5).

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With respect to claim 5, Briggs discloses wherein the neck strap connects to the tracheostomy collar and the ring strap holds (Figs. 3-5; inasmuch as the neck strap is hook and looped with the ring strap hold the examiner is reading this as meeting the functional limitations of the claim).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briggs, III (5,839,437).

The difference between Briggs and claim 6 is the ring having a major axis extending between the strap holds and a minor axis extending between the secondary strap holds and the major axis is greater than the minor axis.

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It would have been obvious to one of ordinary skill in the art that the major and minor axis and the size is a mere matter of design consideration because as long as the ring holds the straps thereto and then secures the auxiliary device to the tracheostomy tube the device would work the same regardless of having a major and minor axis, as such the examiner contends that the limitations of the minor and major axis are a design consideration which is not patentably distinct over the prior art of Briggs.

With respect to claim 7, note rejection of claim 6 above.

With respect to claims 8, 10, and 11, it would have been obvious because they would have resulted from the use of the device disclosed above.

With respect to claim 9, the neck strap passing through slots on the tracheostomy tube and also passing through the strap holds on the retainer would be a design consideration which is not patentably distinct over the prior art of Briggs because the neck strap tracheostomy and auxiliary device are secure regardless of how the straps loop to each other.

Conclusion

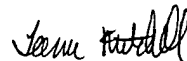
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show tube holding devices: 6,722,369; 6,612,309; 6,394,092; 6,047,699; 5,782,236; 5,471,980.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached Monday-Friday, however the examiner is on a flexible schedule.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teena Mitchell
Examiner
Art Unit 3743
November 27, 2004